

By: Carter

H.B. No. 2565

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the formation of benefit corporations and to the  
3 consideration of public benefits and other interests by officers  
4 and directors of benefit corporations; providing for the imposition  
5 of a fee.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Subchapter A, Chapter 3, Business Organizations  
8 Code, is amended by adding Section 3.016 to read as follows:

9 Sec. 3.016. SUPPLEMENTAL PROVISION REQUIRED IN CERTIFICATE  
10 OF FORMATION OF BENEFIT CORPORATION. In addition to the provisions  
11 required or permitted to be stated in the certificate of formation  
12 of a for-profit or professional corporation under Section 3.007 or  
13 a close corporation under Section 3.008, the certificate of  
14 formation of a benefit corporation, whether original, amended, or  
15 restated, must include the sentence, "This corporation is a benefit  
16 corporation."

17 SECTION 2. Chapter 21, Business Organizations Code, is  
18 amended by adding Subchapter R to read as follows:

19 SUBCHAPTER R. BENEFIT CORPORATIONS

20 Sec. 21.851. APPLICABILITY; CONFLICT WITH OTHER CODE  
21 PROVISIONS. (a) This subchapter applies only to a benefit  
22 corporation.

23 (b) This chapter applies to a benefit corporation to the  
24 extent not inconsistent with this subchapter.

1       (c) A benefit corporation may be subject simultaneously to  
2 this subchapter and Subchapter O and Chapters 301, 302, and 303. To  
3 the extent this subchapter conflicts with Subchapter O or Chapter  
4 301, 302, or 303, this subchapter controls.

5       (d) A provision of the certificate of formation or bylaws of  
6 a benefit corporation may not limit, be inconsistent with, or  
7 supersede a provision of this chapter.

8       Sec. 21.852. DEFINITIONS. In this chapter:

9           (1) "Benefit corporation" means a domestic  
10 corporation formed under this subchapter or governed by this  
11 subchapter as provided by Section 21.854 or 21.855.

12           (2) "Benefit director" means:

13                   (A) the director designated as the benefit  
14 director of a benefit corporation under Section 21.859; or

15                   (B) a person with one or more of the powers,  
16 duties, or rights of a benefit director to the extent provided in  
17 the bylaws.

18           (3) "Benefit enforcement proceeding" means a claim or  
19 action for:

20                   (A) failure of a benefit corporation to pursue or  
21 create a general public benefit or a specific public benefit  
22 purpose contained in the corporation's certificate of formation; or

23                   (B) a violation of an obligation, duty, or  
24 standard of conduct under this subchapter.

25           (4) "Benefit officer" means the person designated as  
26 the benefit officer of a benefit corporation under Section 21.861.

27           (5) "General public benefit" means a material positive

1 impact on society and the environment, taken as a whole, assessed in  
2 accordance with a third-party standard, from the business and  
3 operations of a benefit corporation.

4 (6) "Publicly traded corporation" means a for-profit  
5 corporation that has shares listed on a national securities  
6 exchange or traded in a market maintained by one or more members of  
7 a national securities association.

8 (7) "Specific public benefit" includes:

9 (A) providing low-income or underserved  
10 individuals or communities with beneficial products or services;

11 (B) promoting economic opportunity for  
12 individuals or communities beyond the creation of jobs in the  
13 normal course of business;

14 (C) protecting or restoring the environment;

15 (D) improving human health;

16 (E) promoting the arts, sciences, or advancement  
17 of knowledge;

18 (F) increasing the flow of capital to entities  
19 with the purpose of benefiting society or the environment; and

20 (G) conferring any other particular benefit on  
21 society or the environment.

22 (8) "Third-party standard" means a recognized  
23 standard for defining, reporting, and assessing corporate social  
24 and environmental performance that:

25 (A) is comprehensive because it assesses the  
26 effect of the business and its operations on the interests listed in  
27 Section 21.858(a)(1)(B), (C), (D), or (E);

1           (B) is developed by an entity not controlled by  
2 the benefit corporation;

3           (C) is developed by an entity:

4           (i) with access to the expertise necessary  
5 to assess overall corporate social and environmental performance;  
6 and

7           (ii) using a balanced multi-stakeholder  
8 approach to develop the standard, including a reasonable period for  
9 public comment; and

10          (D) is transparent because the following  
11 information about the standard is publicly available:

12          (i) the criteria considered when measuring  
13 the overall social and environmental performance of a business;

14          (ii) the relative weight given to those  
15 criteria, if any;

16          (iii) the identity of the directors,  
17 officers, material owners, and members of the governing body of the  
18 entity who develop and control changes to the standard;

19          (iv) the process by which changes to the  
20 standard and to the membership of the governing body are made; and

21          (v) an accounting of the revenue and  
22 sources of financial support for the entity, with sufficient detail  
23 to disclose any relationships that could reasonably be considered  
24 to present a potential conflict of interest.

25          Sec. 21.853. FORMATION OF BENEFIT CORPORATION. A benefit  
26 corporation shall be formed in accordance with Chapter 3.

27          Sec. 21.854. ADOPTION OF AMENDMENT FOR BENEFIT CORPORATION

1 STATUS. A domestic corporation that is not a benefit corporation  
2 may become a benefit corporation by amending its certificate of  
3 formation in accordance with Chapter 3 to conform with Section  
4 3.016.

5 Sec. 21.855. ADOPTION OF BENEFIT CORPORATION STATUS THROUGH  
6 MERGER, EXCHANGE, OR CONVERSION. A surviving or new domestic  
7 corporation resulting from a merger or conversion or a corporation  
8 that is acquired under an interest exchange under Chapter 10 may  
9 become a benefit corporation if, as part of the plan of merger,  
10 exchange, or conversion, the certificate of formation conforms with  
11 Section 3.016.

12 Sec. 21.856. TERMINATION OF BENEFIT CORPORATION STATUS. A  
13 benefit corporation may terminate its status as a benefit  
14 corporation by:

15 (1) amending the benefit corporation's certificate of  
16 formation under Chapter 3 by deleting from the certificate of  
17 formation the statement that it is a benefit corporation; or

18 (2) engaging in a merger, interest exchange, or  
19 conversion under Chapter 10, unless the plan of merger, exchange,  
20 or conversion provides that the surviving or new corporation will  
21 continue as or become a benefit corporation.

22 Sec. 21.857. CORPORATE PURPOSES. (a) A benefit corporation  
23 shall have a purpose of creating a general public benefit. This  
24 purpose is in addition to its purpose under Chapter 2.

25 (b) The certificate of formation of a benefit corporation  
26 may include or be amended to include one or more specific public  
27 benefits that it is the purpose of the benefit corporation to create

1 in addition to the purposes of the corporation under Chapter 2 and  
2 Subsection (a). The inclusion of a specific public benefit in a  
3 corporation's certificate of formation as provided by this  
4 subsection does not limit the duty of the benefit corporation to  
5 create a general public benefit under Subsection (a).

6 (c) The creation of a general public benefit and specific  
7 public benefit under this section is considered to be in the best  
8 interests of the benefit corporation.

9 (d) A benefit corporation may amend its certificate of  
10 formation under Subchapter B, Chapter 3, to add, amend, or delete a  
11 specific public benefit that it is the purpose of the benefit  
12 corporation to create.

13 (e) A benefit corporation that is a professional entity does  
14 not violate Section 2.004 by having as a purpose the creation of a  
15 general public benefit or specific public benefit.

16 Sec. 21.858. DIRECTOR'S DUTIES; STANDARD OF CONDUCT. (a)  
17 In discharging the duties of their respective positions and in  
18 considering the best interests of the benefit corporation, the  
19 directors of a benefit corporation, individually or as members of a  
20 committee:

21 (1) shall consider the effects of any action or  
22 decision not to take action on:

23 (A) the shareholders of the benefit corporation;

24 (B) the employees and workforce of the benefit  
25 corporation and the corporation's subsidiaries and suppliers;

26 (C) the interests of customers as beneficiaries  
27 of the general public benefit or specific public benefit purpose of

1 the benefit corporation;

2 (D) community and societal factors, including  
3 those of each community in which offices or facilities of the  
4 benefit corporation or the corporation's subsidiaries or suppliers  
5 are located;

6 (E) the local and global environment;

7 (F) the short-term and long-term interests of the  
8 benefit corporation, including benefits that may accrue to the  
9 benefit corporation from its long-term plans and the possibility  
10 that these interests may be best served by the continued  
11 independence of the benefit corporation; and

12 (G) the ability of the benefit corporation to  
13 accomplish its general public benefit purpose and any specific  
14 public benefit purpose;

15 (2) may consider any other pertinent factors or the  
16 interests of any other group that the directors determine are  
17 appropriate to consider; and

18 (3) are not required to give priority to the interests  
19 of a particular person or group referred to in Subdivision (1) over  
20 the interests of any other person or group unless the benefit  
21 corporation has stated in the corporation's certificate of  
22 formation its intention to give priority to certain interests  
23 related to the accomplishment of its general public benefit purpose  
24 or of a specific public benefit purpose identified in the  
25 corporation's certificate of formation.

26 (b) The consideration of interests and factors in the manner  
27 required by Subsection (a) does not constitute a violation of the

1 duties of the directors.

2 (c) Except as provided by the certificate of formation, a  
3 director is not personally liable for monetary damages for:

4 (1) any action or decision not to take action in the  
5 course of performing the duties of a director under Subsection (a)  
6 if the director performed the duties of office in compliance with  
7 this section; or

8 (2) failure of the benefit corporation to pursue or  
9 create a general public benefit or specific public benefit.

10 (d) A director does not owe a duty to a person that is a  
11 beneficiary of the general public benefit purpose or a specific  
12 public benefit purpose of a benefit corporation arising from the  
13 person's status as a beneficiary.

14 (e) A director who makes a business judgment in good faith  
15 fulfills the director's duty under this section if the director:

16 (1) is not interested in the subject of the business  
17 judgment;

18 (2) is informed with respect to the subject of the  
19 business judgment to the extent the director reasonably believes to  
20 be appropriate under the circumstances; and

21 (3) rationally believes that the business judgment is  
22 in the best interests of the benefit corporation.

23 Sec. 21.859. BENEFIT DIRECTOR. (a) The board of directors  
24 of a benefit corporation that is a publicly traded corporation  
25 shall, and the board of directors of any other benefit corporation  
26 may, include a director who:

27 (1) is designated as the benefit director; and

1           (2) in addition to the powers, duties, rights, and  
2 immunities of the other directors of the benefit corporation, has  
3 the powers, duties, rights, and immunities conferred or provided by  
4 this subchapter.

5           (b) The benefit director shall be elected, and may be  
6 removed, in the manner provided by Subchapter I, Chapter 21. Except  
7 as provided by Subsection (f), the benefit director must be a person  
8 who is independent. The benefit director may serve as the  
9 corporation's benefit officer at the same time the person is  
10 serving as the benefit director. The certificate of formation or  
11 bylaws of a benefit corporation may prescribe additional  
12 qualifications of the benefit director not inconsistent with this  
13 subsection.

14           (c) The benefit director shall prepare, and the benefit  
15 corporation shall include in the annual benefit report to  
16 shareholders required by Section 21.864:

17                   (1) the opinion of the benefit director with respect  
18 to:

19                           (A) whether the benefit corporation acted in  
20 accordance with its general public benefit purpose and any specific  
21 public benefit purpose in all material respects during the period  
22 covered by the report; and

23                           (B) whether the directors and officers complied  
24 with Sections 21.858(a) and 21.860(a), respectively; and

25                   (2) if, in the opinion of the benefit director, the  
26 benefit corporation or the directors or officers of the corporation  
27 failed to act or comply in the manner described by Subdivision

1 (1)(A) or (B), a description of the ways in which the benefit  
2 corporation or the directors or officers failed to act or comply  
3 with each particular provision.

4 (d) The action or decision not to take action of an  
5 individual in the person's capacity as a benefit director  
6 constitutes for all purposes an action or decision not to take  
7 action of that person in the person's capacity as a director of the  
8 benefit corporation.

9 (e) Regardless of whether the certificate of formation of a  
10 benefit corporation includes a provision limiting or restricting  
11 the personal liability of directors authorized by Section 7.001, a  
12 benefit director may not be held personally liable for an act or  
13 omission in the person's capacity as a benefit director unless the  
14 act or omission constitutes intentional misconduct or a knowing  
15 violation of a law.

16 (f) The benefit director of a professional corporation is  
17 not required to be independent.

18 Sec. 21.860. STANDARD OF CONDUCT FOR OFFICERS. (a) Each  
19 officer of a benefit corporation shall consider the interests and  
20 factors described by Section 21.858(a) in the manner provided by  
21 that subsection if:

22 (1) the officer has discretion to act with respect to a  
23 matter; and

24 (2) it reasonably appears to the officer that the  
25 matter may have a material effect on the creation by the benefit  
26 corporation of a general public benefit or any specific public  
27 benefit included in the certificate of formation of the benefit

1 corporation.

2 (b) The consideration of interests and factors by an officer  
3 of a benefit corporation in the manner required by Subsection (a)  
4 does not constitute a violation of the duties of an officer.

5 (c) Except as provided by the certificate of formation, an  
6 officer is not personally liable for monetary damages for:

7 (1) any action taken or decision not to take action in  
8 the course of performing the duties of an officer under Subsection  
9 (a) if the officer performed the duties of the position in  
10 compliance with this section; or

11 (2) failure of the benefit corporation to pursue or  
12 create a general public benefit or specific public benefit.

13 (d) An officer does not owe a duty to a person that is a  
14 beneficiary of the general public benefit purpose or a specific  
15 public benefit purpose of a benefit corporation arising from the  
16 person's status as a beneficiary.

17 (e) An officer who makes a business judgment in good faith  
18 fulfills the officer's duty under this section if the officer:

19 (1) is not interested in the subject of the business  
20 judgment;

21 (2) is informed with respect to the subject of the  
22 business judgment to the extent the officer reasonably believes to  
23 be appropriate under the circumstances; and

24 (3) rationally believes that the business judgment is  
25 in the best interests of the benefit corporation.

26 Sec. 21.861. BENEFIT OFFICER. (a) A benefit corporation  
27 may have an officer designated as the benefit officer.

1           (b) A benefit officer:

2           (1) has the powers and duties relating to the purpose  
3 of the corporation to create a general public benefit or specific  
4 public benefit provided by the bylaws or, absent a controlling  
5 provision in the bylaws, by a resolution or order of the board of  
6 directors; and

7           (2) shall prepare the benefit report required by  
8 Section 21.864.

9           Sec. 21.862. PERSON WHO IS INDEPENDENT FROM BENEFIT  
10 CORPORATION OR SUBSIDIARY. (a) For purposes of this subchapter, a  
11 person is considered to be independent of a benefit corporation or a  
12 subsidiary of the corporation if the person has no material  
13 relationship with the benefit corporation or its subsidiary.

14           (b) Serving as benefit director or benefit officer does not  
15 make a person not independent.

16           (c) A material relationship between an individual and a  
17 benefit corporation or any of the corporation's subsidiaries will  
18 be conclusively presumed to exist under Subsection (a) if:

19           (1) within the preceding three years, the individual  
20 is or has been an employee, other than a benefit officer, of the  
21 benefit corporation or subsidiary;

22           (2) within the preceding three years, an immediate  
23 family member of the individual is or has been an executive officer,  
24 other than a benefit officer, of the benefit corporation or  
25 subsidiary; or

26           (3) the individual or an entity of which the  
27 individual is a director, officer, or manager owns beneficially or

1 of record five percent or more of the outstanding shares of the  
2 benefit corporation, calculated as if all outstanding rights to  
3 acquire equity interests in the benefit corporation had been  
4 exercised, or the individual owns beneficially or of record five  
5 percent or more of the outstanding equity interests of the benefit  
6 corporation, calculated as if all outstanding rights to acquire  
7 equity interests in the equity had been exercised.

8 Sec. 21.863. RIGHT OF ACTION. (a) Except in a benefit  
9 enforcement proceeding, a person may not bring an action or assert a  
10 claim against a benefit corporation or the corporation's directors  
11 or officers for:

12 (1) failure to pursue or create a general public  
13 benefit or specific public benefit set forth in the corporation's  
14 certificate of formation; or

15 (2) a violation of an obligation, duty, or standard of  
16 conduct under this subchapter.

17 (b) A benefit enforcement proceeding may be commenced or  
18 maintained:

19 (1) directly only by the benefit corporation; or

20 (2) derivatively in accordance with Subchapter L,  
21 Chapter 21, only by:

22 (A) a person or group of persons that owned  
23 beneficially or of record at least two percent of the total number  
24 of shares of a class or series outstanding at the time of the act or  
25 omission that is the subject of the complaint;

26 (B) a director of the benefit corporation;

27 (C) a person or group of persons that owned

1 beneficially or of record five percent or more of the outstanding  
2 equity interests in an entity of which the benefit corporation is a  
3 subsidiary at the time of the act or omission that is the subject of  
4 the complaint; or

5 (D) other persons as specified in the certificate  
6 of formation.

7 (c) For purposes of this section, a person is the beneficial  
8 owner of shares or equity interests if the shares or equity  
9 interests are held in a voting trust or by a nominee on behalf of the  
10 beneficial owner.

11 (d) A benefit corporation is not liable for monetary damages  
12 under this subchapter for any failure of the benefit corporation to  
13 pursue or create a general public benefit or specific public  
14 benefit.

15 Sec. 21.864. PREPARATION OF ANNUAL BENEFIT REPORT. (a) A  
16 benefit corporation shall prepare an annual benefit report. The  
17 report must include:

18 (1) a description of:

19 (A) the ways in which the corporation pursued a  
20 general public benefit during the preceding fiscal year and the  
21 extent to which the general public benefit was created;

22 (B) the ways in which the corporation pursued the  
23 creation of any specific public benefit included as a purpose of the  
24 corporation in the certificate of formation and the extent to which  
25 that specific public benefit was created;

26 (C) any circumstances that may have hindered the  
27 corporation's creation of a general public benefit or specific

1 public benefit; and

2 (D) the process and rationale for selecting or  
3 changing the third-party standard used to prepare the benefit  
4 report;

5 (2) an assessment of the overall social and  
6 environmental performance of the benefit corporation prepared in  
7 accordance with a third-party standard:

8 (A) applied in a manner that is consistent with  
9 any application of that standard in prior benefit reports, if any;  
10 or

11 (B) if applied inconsistently, accompanied by an  
12 explanation of the reasons for the inconsistent application or  
13 accompanied by the change to that standard from the one used in the  
14 prior year's report;

15 (3) the name of the benefit director and the benefit  
16 officer, if any, and the address to which correspondence to each of  
17 them may be mailed;

18 (4) the compensation paid by the benefit corporation  
19 during the year to each director in the person's capacity as a  
20 director;

21 (5) the opinion of the benefit director described by  
22 Section 21.859(c); and

23 (6) a statement of any connection between the  
24 organization that established the third-party standard, or its  
25 directors, officers, or any holder of five percent or more of the  
26 governance interests in the organization, and the benefit  
27 corporation or its directors, officers, or any holder of five

1 percent or more of the outstanding shares of the benefit  
2 corporation, including any financial or governance relationship  
3 that might materially affect the credibility of the use of the  
4 third-party standard.

5 (b) If, during the reporting period of a benefit report, a  
6 benefit director resigned from or refused to seek reelection to the  
7 position of benefit director or was removed from the position of  
8 benefit director, and the benefit director furnished the benefit  
9 corporation with any written correspondence concerning the  
10 circumstances surrounding the resignation, refusal, or removal,  
11 the benefit report shall include that correspondence as an exhibit.

12 (c) A benefit report or the assessment of the performance of  
13 the benefit corporation in the benefit report required by  
14 Subsection (a)(2) is not required to be audited or certified by a  
15 third-party standards provider.

16 Sec. 21.865. AVAILABILITY OF ANNUAL BENEFIT REPORT. (a) A  
17 benefit corporation shall deliver the annual benefit report  
18 prepared under Section 21.864 to each shareholder:

19 (1) not later than the 120th day after the last day of  
20 the fiscal year of the benefit corporation; or

21 (2) at the same time the benefit corporation delivers  
22 any other annual report to the corporation's shareholders.

23 (b) A benefit corporation shall:

24 (1) post all annual benefit reports on the portion of  
25 the corporation's Internet website accessible by the public, if  
26 any; and

27 (2) if the corporation does not have an Internet

1 website accessible by the public, provide a copy of the most recent  
2 benefit report, without charge, to any member of the public who  
3 requests a copy.

4 (c) Concurrently with the delivery of the benefit report to  
5 shareholders under Subsection (b), the benefit corporation shall  
6 deliver a copy of the benefit report to the secretary of state for  
7 filing. The secretary of state shall impose a fee of \$15 for filing  
8 a benefit report.

9 (d) A benefit corporation may omit from a benefit report  
10 provided under Subsection (b)(1) or (2) or (c) the amount of  
11 compensation paid to directors and financial or proprietary  
12 information included in the report.

13 SECTION 3. This Act takes effect September 1, 2013.